



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/17/04	Bill No:	AB 2107
Tax:	Sales and Use	Author:	Levine
Board Position:		Related Bills:	AB 694 (Levine)

BILL SUMMARY

This bill would provide that it shall be rebuttably presumed that, except as specified, a vehicle, vessel, or aircraft purchased outside this state and brought into California within 12 months from the date of purchased is purchased for use in California and is subject to California use tax, except as specified, if that vehicle, vessel, or aircraft 1) was purchased by a California resident, 2) was subject to California's vehicle registration or property tax during the first 12 months of ownership, or 3) was used or stored in this state more than half of the time during the first 12 months of ownership.

ANALYSIS

Current Law

Under existing law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code, a use tax is imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless that purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax, unless the use of that property is specifically exempted or excluded from tax. The use tax is the same rate as the sales tax and is required to be remitted to the Board, or in the case of a vehicle or vessel, to the Department of Motor Vehicles.

Under current law and Board regulations, a vehicle, vessel, or aircraft purchased by a California resident is presumed to have been purchased for use in California and is subject to the California use tax. Also, a vehicle, vessel, or aircraft purchased by a nonresident is presumed to have been purchased for use in California if it enters this state within the first 90 days of ownership. These transactions are subject to the tax unless all of the following occur:

- The purchaser takes title to and possession of the vehicle, vessel, or aircraft while it is out of state; and
- The purchaser makes the first functional use of it outside the state; and
- The purchaser uses it out of state for more than 90 days before the vehicle, vessel, or aircraft first enters California.

Under Regulation 1620, *Interstate and Foreign Commerce*, in determining the 90-day period of use outside California, the time is not counted when the vehicle, vessel, or aircraft was in shipment, or in storage for shipment, to California.

If the vehicle, vessel, or aircraft is purchased outside California and is first functionally used outside California but enters the state within the first 90 days of purchase (exclusive of time of shipment or storage for shipment to California), the vehicle, vessel, or aircraft is presumed to have been purchased for use in California unless it is used or stored outside the state more than 50 percent of the time during the six-month period immediately following the first entry into California.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Proposed Law

This bill would amend Section 6248 of the Sales and Use Tax Law to expand the existing presumption to a vehicle, vessel, or aircraft purchased outside this state. Specifically, the bill would provide that it shall be rebuttably presumed that a vehicle, vessel, or aircraft bought outside this state and brought into this state during the first 12 months of the date of purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

(a) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code.

(b) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(c) In the case of a vessel or aircraft, the vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(d) The vehicle, vessel, or aircraft was used or stored in this state more than one-half of the time during the first 12 months of ownership.

The bill would further provide that this presumption may be controverted by documentary evidence, that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership, that shall include, but not be limited to, evidence of registration of that vehicle, vessel, or aircraft with the proper authority outside of this state. In addition, the bill would clarify that the provisions do not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the Board.

And, finally, the bill would specify that an aircraft shall not be deemed to be purchased for use in this state if that aircraft is brought into this state for the purpose of repair, retrofit, or modification of the aircraft, provided that no more than 25 hours of airtime are logged on the aircraft for that purpose, as specified.

The bill would become effective on the first day of the first calendar quarter commencing more than 90 days after the bill becomes law.

Background

Similar provisions are also contained in Assembly Member Levine's AB 694, introduced in 2003 and currently on the Senate's inactive file. It was apparently prompted by a *Sacramento Bee* article concerning a perceived tax loophole with respect to current law. The article cited instances in which California purchasers of yachts from California yacht retailers were arranging delivery of the yachts outside the territorial waters of California, leaving them in Mexico for the 90-day period, and bringing them into California and escaping the California sales or use tax.

In General

The California sales tax generally does not apply to a transaction when a California retailer sells an item and ships it directly to the purchaser at an out-of-state location, for use outside California. The sale is regarded under the law as a sale in interstate commerce. In general, the sale is not taxable if the retailer:

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- Ships the product directly to the purchaser, using his or her own delivery vehicle or another means of transport that he or she owns; or
- Ships the product by delivering it to a common carrier, contract carrier, customs broker, export packer, or forwarding agent.

In most cases, if a purchaser or his or her representative takes possession of an item in California — even temporarily — the sale does not qualify for the sales tax exemption. In addition, if the retailer delivers an item to a California resident at an out-of-state location, tax does apply, unless the purchaser states, in writing, that the item was purchased for use outside California. Nonetheless, if the retailer knows that the customer plans to use the item in California within 90 days of its purchase, the sale is subject to tax.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author in an attempt to minimize the revenue losses associated with the current 90-day rebuttable presumption provisions in law.
2. **Bill would not be problematic to administer.** This bill would actually minimize the staff time associated with investigating claimed exemptions, since the bill would essentially shift the burden of proof onto the purchaser to establish the exemption. Currently, the transaction is generally presumed exempt if it meets the 90-day test. Enactment of this measure would presume the transaction is subject to tax if it meets the criteria in the bill, and the responsibility would be placed on the purchaser to provide the necessary documentation to the Board to overcome that presumption of taxability.
3. **Should the law be more stringent?** The Board's Consumer Use Tax Section routinely investigate transactions in which California purchasers take delivery of vehicles, vessels, or aircraft outside this state and claim an exemption for the California use tax under the current 90-day presumption provisions. According to that section, staff often finds that purchasers are residents of California who were informed of the use tax exemption by dealers or brokers who are using the tax avoidance opportunity as a sales incentive. Often the purchasers' travel itinerary is constructed around the exemption requirements established by law so as to avoid paying tax. Some would argue that this is not a tax loophole but simply good tax planning.

COST ESTIMATE

Enactment of this measure may minimize the staff time devoted to claimed exemptions. However, this would not result in any measurable reduction in staffing.

REVENUE ESTIMATE**Background, Methodology, and Assumptions**

To determine the revenue impact of the current statute, the Board's Consumer Use Tax Section (CUTS) staff compiled statistics for the six months, ending on June 30, 2002, on vehicle, vessels, and aircraft files in which exemptions were granted or denied for both the 90-day and six-month principal use test supporting the exemption. In total, CUTS reviewed 1,408 files and found that 981 exemptions were granted resulting in a state and local revenue loss of \$27.3 million for the six months compiled. Under the proposed change in the law, all 981 of these exemptions would be taxable. The remaining 427 files were denied, representing \$5.6 million in use tax billed by the Board. Projected annually, this measure would increase by \$54.6 million (\$27.3 x 2) the collection of state and local sales and use tax revenue. It is expected that the provisions exempting the use of aircraft in this state for the sole purpose of repair, retrofit, or modification would not result in a revenue impact.

Revenue Summary

This bill would result in an annual increase in state and local sales and use tax revenue of \$54.6 million.

	<u>Revenue Effect</u>
State Gain (5.0%)	\$34.5 million
Local Gain (2.25%)	15.5 million
Special District Gain (.67%)	<u>4.6 million</u>
Total	<u>\$54.6 million</u>

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